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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,529	01/20/2004	Masayuki Matsui	Q79426	7099

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2100 PENNSYLVANIA AVE. NW
WASHINGTON, DC 20037-3213

EXAMINER	
PADEN, CAROLYN A	
ART UNIT	PAPER NUMBER
1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/01/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/759,529	MATSUI ET AL.	
	Examiner	Art Unit	
	Carolyn A. Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 July 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-25* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-25* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *7-22-04*.
4) ☒ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

This office action is provided to restart the time period for response to the non-final rejection because the last office action did not provide a rejection of all of the claims in the application. This office action adds a new rejection of the claims over Dumoulin (5,958,503) as further evidenced by Lowe.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Loliger (5,364,886).

The abstract and examples show oil or fat that is stabilized with ascorbic acid. The intended use of the composition does not alone carry any patentable weight.

Claims 1, 10 and 21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sugihara (5,023,101).

The addition of the anti-oxidants ascorbic acid and citric acid is suggested at column 4, lines 13-14. At column 2, line 32 and in the title,

the shortening is described as "for hard butter" and hard butter is described as "for confectionery".

Claims 1-3, 10 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Knowlton (5,981,781).

Knowlton discloses soybean oil having high oxidative stability. At column 5, lines 17-30, utility of the oil in confectionery foods are disclosed. At column 11, lines 48-52, the addition of 30 ppm citric acid is shown and at column 12, lines 18-24, the addition of 50 ppm citric acid is disclosed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 10 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knowlton (5,981,781).

Knowlton discloses soybean oil having high oxidative stability. At column 5, lines 17-30, utility of the oil in confectionery foods are disclosed. At column 11, lines 48-52, the addition of 30 ppm citric acid is shown and at column 12, lines 18-24, the addition of 50 ppm citric acid is disclosed. The claims appear to differ from Knowlton in the recitation that the triglyceride is

in the form of a fat. Oil and fat are known to be created from common triglyceride structures. One of ordinary skill in the art would recognize that an antioxidant added to fat would be at least as stable as an anti-oxidant added to oil.

Claims 1, 4, 10-16, 20-21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Takeda (5,928,704).

Takeda discloses shortening for chocolate. At column 4, lines 17-26, anti-oxidants such as citric and ascorbic acid are described as known additives for the shortening. The intended use of the chocolate in a coating does not carry any patentable weight. Also chocolate would be expected to be an emulsified food because it contains both oil and water-based ingredients.

Claims 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeda in view of Loliger.

Takeda discloses shortening for chocolate. At column 4, lines 17-26, anti-oxidants such as citric and ascorbic acid are described as known additives for the shortening. The intended use of the chocolate in a coating does not carry any patentable weight. Also chocolate would be expected to be an emulsified food because it contains both oil and water-based

ingredients. The claims appear to differ from Takeda in the recitation of the use of a particular amount of antioxidant in the composition. Loliger teaches a synergistic combination of anti-oxidants for the treatment of fats and oils that includes ascorbyl palmitate. The oil is combined with antioxidants dissolved in ethanol and then the solvent is eliminated by heating the mixture at 60C under a light vacuum (column 2, lines 40-48). It is appreciated that the amount of antioxidant in Loliger is different than that shown in the claims. But to adjust the amount of anti-oxidant used in a food would have been within the abilities of one of ordinary skill in the art. It is well known that the saturated fat or hard butter in Takeda is less susceptible to oxidation than unsaturated, which is often oil. Thus one of ordinary skill in the art would not expect to need high amounts of anti-oxidants in such a fat. Further to modify the amount of anti-oxidant in Loliger would have been an obvious way to control fat oxidation for a limited and desired time.

Claims 1-3 and 5-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loliger alone or if necessary in view of Takeda.

Loliger discloses a synergistic combination of anti-oxidants for the treatment of fats and oils that includes ascorbyl palmitate. The oil is

combined with antioxidants dissolved in ethanol and then the solvent is eliminated by heating the mixture at 60C under a light vacuum (column 2, lines 40-48). The claims appear to differ from Loliger in the recitation of the use of the particular amounts of anti-oxidants that are used in the composition. But to adjust the amount of anti-oxidant used in a food would have been within the abilities of one of ordinary skill in the art. It is well known that the saturated fat or hard butter in Takeda is less susceptible to oxidation than unsaturated, which is often oil. Thus one of ordinary skill in the art would not expect to need high amounts of anti-oxidants in such a fat. Further to modify the amount of anti-oxidant in Loliger would have been an obvious way to control fat oxidation for a limited and desired time.

Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pires (2002/0119238).

Pires discloses an oil-in-water emulsion made to contain citric acid and fruit syrup that is used in a filling (see examples 1 & 2). Claim 17 appears to differ from Pires in the recitation of the use of the product in a beverage. It would have been obvious to one of ordinary skill in the art to include the creamy product of Pires in a beverage in order to create a milk-shake-like product.

Claims 16-19 and 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dumoulin (5,958,503) as further evidenced by Lowe.

Dumoulin discloses fruit ganache having citric acid as an acidity regulator (abstract and column 3, lines 38-39). The product is made from sugar, fat, milk and fruit (column 4, lines 33-55). The claims appear to differ in the recitation of the inclusion of an oil in water cream composition. Lowe is relied upon for evidence that milk is an oil in water cream composition. The definition of an oil in water emulsion is shown at page 267, the fat in milk is described at page 296 and the effect of homogenization on milk fat globules is described on page 298. So one of ordinary skill in the art, with the evidence of Lowe before him, would expect the fruit ganache of Dumoulin to have an oil in water cream composition within the milk ingredient (milk is typically consumed as a beverages) that is used the fruit ganache. It is appreciated that the specific amount of organic acid is not mentioned but the amount of organic acid in the product would have been within the determination of one of ordinary skill in the art, who desires to adjust the pH of the food.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Carolyn Paden

CAROLYN PADEN 1-19-07
PRIMARY EXAMINER 1761